

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

AMERICAN CORN GROWERS)	
ASSOCIATION,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 07-100-SLR
)	
MONSANTO COMPANY,)	
)	
Defendant.)	

**DEFENDANT MONSANTO COMPANY'S MOTION TO DISMISS FOR
FAILURE TO STATE A CLAIM AND LACK OF STANDING**

Pursuant to Fed. R. Civ. P. 12(b)(6) and 12(b)(1), Defendant Monsanto Company respectfully moves this Court to dismiss Plaintiff American Corn Growers Association's ("ACGA") Complaint on two independent grounds.

First, the ACGA Complaint was brought in violation of a forum selection clause in a license agreement that binds both ACGA and its members. Indeed, ACGA filed this Complaint in an effort to circumvent motions to dismiss based on the forum selection clause that are pending in two virtually identical actions filed in this Court by ACGA's counsel. *See Pullen Seeds and Soil v. Monsanto*, C.A. No. 06-599-SLR, (D. Del. Filed on Sept. 26, 2006) and *Wade Farms v. Monsanto*, C.A. No. 06-600-SLR, (D. Del. Filed on Sept. 26, 2006).

Second, ACGA lacks standing to sue on its own behalf or on behalf of ACGA's grower members that are now putative class members in the *Pullen* and *Wade* actions. ACGA alleges no injury to itself and its members are the more direct alleged "victims" who are better equipped to pursue this action as putative class members in the *Pullen* and *Wade* actions. ACGA further lacks associational standing because this action is not

germane to the organization's purpose, and will clearly require individual members' participation. Further, the filing of this lawsuit draws into question whether counsel can adequately represent both the association and the putative class given their apparent divergent interests among the two.

The grounds for this Motion are set forth in Monsanto's Memorandum in Support, filed contemporaneously herewith. A proposed Order is attached to this Motion for the Court's convenience.

Respectfully submitted,

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Dated: March 13, 2007
783292 / 31255

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CERTIFICATE OF SERVICE

I, David E. Moore, hereby certify that on March 13, 2007, the attached document was hand delivered to the following persons and was electronically filed with the Clerk of the Court using CM/ECF which will send notification to the registered attorney(s) of record that the document has been filed and is available for viewing and downloading:

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C.A. No. 07-100-SLR

ORDER

Having considered Defendant's Motion to Dismiss all counts of Plaintiff's Complaint, this Court hereby ORDERS that the Defendant's Motion to Dismiss is GRANTED.

SO ORDERED THIS _____ DAY OF _____, 2007.

United States District Judge

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